9

(3)

No. 06-769

FILED
MAR 2 3 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

DONALD WEEMS and MICHAEL BRIGGS,

Petitioners,

v.

LAWRENCE JOHNSON, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENT CITY OF PINE BLUFF IN OPPOSITION

BEST AVAILABLE COPY

NGA OSTOJA-STARZEWSKI
Post Office Box 38
N. Little Rock, Arkansas 72115
(501) 978-6125
Attorney for Respondent City of Pine Bluff

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities i

Summary of the Argument 1

Reasons For Denying The Petition 1

Conclusion 3

TABLE OF AUTHORITIES

CASES

Monell v. Department of Social Services, 436 U.S. 658 (1978) 1

STATUTES

42 U.S.C. § 1983 1

Ark. Code Ann. § 12-12-906 2

Ark. Code Ann. § 12-12-917 ..... 2, 3

Ark. Code Ann. § 12-12-921 2

SUMMARY OF THE ARGUMENT

Assessing whether a sex offender constitutes a violent sexual predator under the Arkansas Sex and Child Offender Registration Act is a determination made by the Sex Offender Screening and Risk Assessment ("SOSRA"), a unit located in the Arkansas Department of Correction. The Sex Offender Assessment Committee, members of which are appointed by the Governor of the State of Arkansas, causes the assessments to be conducted and oversees the assessment process.

The City of Pine Bluff does not have any statutory authority to perform assessments of sex offenders under the Registration Act. Since Petitioners are challenging a state statute and assessments which are performed by the State of Arkansas pursuant to state statute, the petition for writ of certiorari should be denied as to Separate Respondent, the City of Pine Bluff.

REASONS FOR DENYING THE PETITION

A city cannot be held liable under 42 U.S.C. § 1983 unless a municipal policy or custom is the moving force behind the alleged constitutional violation. *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978).

In the present case, the petition for writ of certiorari presents only one question: "What are the minimal procedural due process protections required in 'dangerousness' assessments of sex offenders where the assessments are material to the application of regulatory statutes against sex offenders?"

The City of Pine Bluff does not assess the "dangerousness" of sex offenders. By statute, the Sex Offender Assessment Committee is solely responsible for causing "dangerousness" assessments to be conducted under the Sex and Child Offender Registration Act. Ark. Code Ann. § 12-12-917(b)(1). The Committee is comprised of nine (9) persons and includes the Director of the Department of Correction or the director's designee, the Director of the Department of Community Correction or the director's designee, and the Director of the Arkansas Crime Information Center or the director's designee. In addition, the Governor of the State of Arkansas appoints, subject to state senate confirmation, a criminal defense attorney, a prosecuting attorney, a licensed health professional with demonstrated expertise in the treatment of sex offenders, a victims' rights advocate, a law enforcement officer, and a member with expertise in juvenile justice or treatment, to serve on the Committee. Ark. Code Ann. § 12-12-921. The Committee reports to the Governor and legislative council. *Id.*

With oversight from the Committee, the assessments are performed by the Sex Offender Screening and Risk Assessment, a unit located at the Arkansas Department of Correction. Ark. Code Ann. §§ 12-12-906(a)(1)(D)(i) and 12-12-917(b)(2)(A)(ii)(a) and (b)(4)(A).

The City of Pine Bluff has no authority to make "dangerousness" assessments of sex offenders or to cause such assessments to be made under the Registration Act. Only the Sex Offender Assessment Committee and the Sex Offender Screening and Risk Assessment unit have been statutorily vested with such authority. Petitioners themselves maintain that it is the State of Arkansas which makes a "case-by-case assessment of the 'public risk posed'

by an offender." Petition for Writ of Certiorari, p. 3, citing Ark. Code Ann. § 12-12-917(b)(1).

Petitioners are challenging the constitutionality of *state* statutes and the *State's* application of same. The statutes providing for the assessment of sex offenders are not policies, practices, or customs of the City of Pine Bluff, but laws enacted by the State of Arkansas. The injuries which Petitioners allegedly suffered were not undertaken pursuant to any policy, practice, or custom of the City of Pine Bluff. Therefore, since Petitioners' claim is not attributable to any unconstitutional *municipal* policy, practice, or custom, their Petition as to the City of Pine Bluff should be dismissed.

CONCLUSION

Petitioners do not challenge the constitutionality of any conduct undertaken by the City of Pine Bluff, but instead question what due process protections are required during sex offender assessments conducted by the State of Arkansas. Therefore, the petition for writ of certiorari should be denied as to Respondent, the City of Pine Bluff.

Respectfully submitted,

NGA OSTOJA-STARZEWSKI
Post Office Box 38
N. Little Rock, AR 72115
(501) 978-6125

Attorney for Respondent
City of Pine Bluff